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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/978,383	10/16/2001	John E. Sherry	498-261	4258

7590 10/31/2003

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EXAMINER

JACKSON, SUZETTE JAMIE

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 10/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/978,383

Applicant(s)

SHERRY, JOHN E.

Examiner

Jackson J Suzette

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16, 18-25, 28-30, 32-35, 38 and 39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 38 and 39 is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-12, 14-16, 18-25, 28-30, 32-35, is/are rejected.
- 7) ☒ Claim(s) 6 and 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION

1. Applicant's RCE dated 10/2/03 has been received in application serial number 09/978,383. Claims 17, 26-27, 31, 36-37 have been canceled.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2, 7-12, 14-16, 18-25, 29-34, 36-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holman et al. 6,319,276. Holman et al. discloses the invention as claimed noting figures 1-12 comprising: a tubular member (10) and an outer covering (22, 24, 50), sealed to portions of the tubular member, a pocket being defined between the tubular member and an outer covering to accommodate a pre-determined agent in forming a seal ring, wherein the outer covering being impervious to said pre-determined agent wherein the pocket singularly circumscribes the tubular member in an annular shape; See col. 1, lines 41-65, col. 2, lines 3-24, co. 3, lines 1-3, col. 3, lines 44-47, col. 4, lines 18-26, col. 4 lines 30-34, can col. 4, lines 53-54; and at least one channel in fluid communication with said pocket (see figure 5 element "50"). The intended use recitation/functional language "*configured not to constrain the seal ring upon formation*" carries no patentable weight in the absence of any distinguishing

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On 10-29-03
structure. Holman et al. clearly discloses the structure as claimed and is found to obviously be capable of performing the function. It is also obvious ^{if} ~~is~~ not inherent that the curing agent of Holman et al. (see col. 3, lines 46-67) forms a sealing ring as it hardens between member (10) and (14, 16). It is also obvious that the peripheral circular conduits or tubes (col. 3, lines 9-10) singularly surround the tubular member. See figure 2, 6 and 7 of the current application vs. figures 2-5 of Holman et al.

4. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holman et al. in view of 5,151,105 in view of Kwan-gett. Holman et al. has been disclosed above however Holman et al. does not specify the use of an expandable stent. Kwan-Gett teaches the use of a tubular sleeve graft in conjunction with a stent. See figure 7. It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the stent with graft as in the Kwan-Gett patent with the graft of the Holman et al. Patent because it is well known in the art that expandable stents have been utilized for supports the graft structures.

5. Claims 28 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holman et al. in view of McDermott et al. 6,312,462. Holman has been disclosed above however Holman does not specify that the curing agent is urethane. McDermott et al. teaches expanding a bifurcated graft device with inflation fluids such as urethanes (see col. 4, line 32). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize urethane because it also would cause the graft of Holman to expand and form the pocket.

Allowable Subject Matter

6. Claims 38-39 are allowed.

7. Claims 6 and 13 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments filed 10/2/03 with RCE have been fully considered but they are not persuasive. Applicant amends the claim 1 (an article claim) to read “...*and at least one channel in fluid communication with said pocket, wherein said channel being configured to not constrain said seal ring upon formation*”. Holmman et al. describes the claim as amended wherein the at least one channel element (50) is in fluid communication with the pocket (24) and the channel which is parallel to the sleeve does not constrain the seal ring upon formation. With regards to claim 29 applicant contends that “*Holman et al. relies on the conveyance of the fluid to implant the prosthesis*” and that claim 29 calls for conveying a filling agent into the pocket of the prosthesis once the prosthesis is implanted. Applicant is directed to col. 3, lines 31-33 and col. 4, lines 17-20 which disclose that the sleeve of Holman et al. is expanded and rigidified, thereby fixing the sleeve at the site of repair.

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Conclusion


9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzette J. Jackson whose work schedule is Monday-Friday 9-6:30 off every other Friday and whose telephone number is 703-308-6516.

10. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306.

11. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.



Suzette J. Jackson
27 October 2003



David H. Willse
Primary Examiner